

TO CLARIFY THAT THE PROTECTIONS OF THE FEDERAL TORT CLAIMS ACT  
APPLY TO THE MEMBERS AND PERSONNEL OF THE NATIONAL GAM-  
BLING IMPACT STUDY COMMISSION

JUNE 23, 1997.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary,  
submitted the following

R E P O R T

[To accompany H.R. 1901]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill  
(H.R. 1901) to clarify that the protections of the Federal Tort  
Claims Act apply to the members and personnel of the National  
Gambling Impact Study Commission, having considered the same,  
reports favorably thereon without amendment and recommends  
that the bill do pass.

TABLE OF CONTENTS

Purpose and Summary .....	Page 2
Background and Need for the Legislation .....	2
Hearings .....	2
Committee Consideration .....	2
Vote of the Committee .....	3
Committee Oversight Findings .....	3
Committee on Government Reform and Oversight Findings .....	3
New Budget Authority and Tax Expenditures .....	3
Congressional Budget Office Cost Estimate .....	3
Constitutional Authority Statement .....	4
Section-by-Section Analysis .....	4
Changes in Existing Law Made by the Bill, as Reported .....	5

## PURPOSE AND SUMMARY

H.R. 1901 clarifies that the protections of the Federal Tort Claims Act apply to the members and personnel of the National Gambling Impact Study Commission.

## BACKGROUND AND NEED FOR THE LEGISLATION

Last year, Congress passed the National Gambling Impact Study Commission Act, Pub. L. No. 104-169, to provide for a comprehensive two-year study of the impact of gambling on the United States. The nine members of the Commission have been appointed, and they held their first meeting on June 20, 1997.

Two members of the Commission have approached the Committee regarding their concerns about incurring personal liability for their work on the Commission. The Committee believes that the protections of the Federal Tort Claims Act ("FTCA") cover members and employees of the Commission because it is an "independent establishment of the United States" under 28 U.S.C. § 2671. Normally, under the FTCA, when someone sues a federal employee for acts occurring within the scope of his or her employment, the United States substitutes itself as the party, defends the action, and pays any judgment.

The Committee attempted to resolve this matter by an exchange of letters with the Department of Justice. However, after several weeks of study, the Department was not able to come to a clear resolution of whether the Commission is or is not covered under FTCA. With the Commission beginning its work, the Committee decided to move forward with a legislative solution.

H.R. 1901 provides that, for purposes of FTCA, the Commission is a federal agency and its members and employees are federal employees. The Department of Justice will still make the determination of whether the particular conduct at issue is within the scope of employment as it does in all FTCA cases. *See* 28 U.S.C. § 2679. Thus, members and employees of the Commission will not receive any special treatment—rather, they will receive the same treatment as all other federal employees. This treatment will apply equally to all members and employees of the Commission. The Committee does not believe that the members and employees should have to put their personal assets at risk in order to serve their country in this important mission, and thus it has adopted this legislative solution.

## HEARINGS

Because of the need for action within a short time, the Committee held no hearings on H.R. 1901.

## COMMITTEE CONSIDERATION

On June 18, 1997, the full Committee met in open session and ordered reported favorably without amendment the bill, H.R. 1901, by a voice vote, a quorum being present.

## VOTE OF THE COMMITTEE

During its consideration of H.R. 1901, the Committee took no roll call votes.

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI does not apply because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1901, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 19, 1997.*

Hon. HENRY J. HYDE,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Office has prepared the enclosed cost estimate for H.R. 1901, a bill to clarify that the protections of the Federal Tort Claims Act apply to the members and personnel of the National Gambling Impact Study Commission.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman, who can be reached at 226-2860.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

*H.R. 1901—A bill to clarify that the protections of the Federal Tort Claims Act apply to the members and personnel of the National Gambling Impact Study Commission*

H.R. 1901 would ensure that members of the National Gambling Impact Study Commission are considered federal employees and

thus would be eligible for the protections provided under the Federal Tort Claims Act (FTCA). The commission was established in 1996 to provide a two-year study of the effects of gambling on the United States. Under the FTCA, federal employees who are sued for acts occurring within the scope of their employment are defended by the federal government; the federal government substitutes itself for the party being sued.

The Department of Justice could incur additional costs under H.R. 1901 to the extent that it becomes a party to litigation affecting the commission. Any such legal costs would be subject to the availability of appropriations. Any judgment rendered against the government from such potential litigation would be paid out of the Claims, Judgments, and Relief Acts account and would be considered direct spending. Because the commission has only recently begun to operate, CBO has no firm basis for predicating either the likelihood of possible litigation or the amounts of potential litigation costs or compensation, but these costs are not likely to be significant.

Because enacting H.R. 1901 could affect direct spending, pay-as-you-go procedures would apply to the bill. The bill does not contain any intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Susanne S. Mehlman, who can be reached at 226-2860. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, clause 8 of the Constitution.

#### SECTION-BY-SECTION ANALYSIS

##### *Sec. 1.—Applicability of Federal Tort Claims Provisions*

Section 1 of H.R. 1901 amends the National Gambling Impact Study Commission Act to provide that, for purposes of the FTCA, the Commission is a federal agency and each of its members and personnel are employees of the Government. The Committee intends that the members and employees of the Commission should be treated the same as all other federal employees for purposes of FTCA and that all members and employees should receive this treatment.

##### *Sec. 2.—Rule of Construction*

Section 2 of H.R. 1901 provides that the amendment made by Section 1 shall not be construed to imply that any other commission is not a —“federal agency” or that the members or personnel of any other commission are not “employees of the government” for purposes of the FTCA. The Committee believes that temporary commissions are “independent establishments of the United States” under 28 U.S.C. § 2671. However, the Department of Justice is the agency charged with implementing the FTCA, and it apparently does not accept this view. Thus, as a practical matter, the Commit-

tee could only provide relief for the members and employees of this Commission by passing H.R. 1901. Notwithstanding that, the Committee has included the rule of construction in Section 2 to clarify that its explicit action in this case should not be read to imply that other commissions are not covered under the FTCA.

*Sec. 3.—Effective Date*

Section 3 of H.R. 1901 provides that the amendment made by Section 1 is effective as of the original date of enactment of the National Gambling Impact Study Commission Act, August 3, 1996.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

**SECTION 6 OF THE NATIONAL GAMBLING IMPACT  
STUDY COMMISSION ACT**

**SEC. 6. COMMISSION PERSONNEL MATTERS.**

(a) \* \* \*

\* \* \* \* \*

(e) *APPLICABILITY OF FEDERAL TORT CLAIMS PROVISIONS.—For purposes of sections 1346(b) and 2401(b) and chapter 171 of title 28, United States Code, the Commission is a “Federal agency” and each of the members and personnel of the Commission is an “employee of the Government”.*